

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WELLS FARGO BANK, N.A., AS
TRUSTEE FOR THE POOLING AND
SERVICING AGREEMENT DATED AS
OF APRIL 1, 2005, PARK PLACE
SECURITIES, INC. ASSET-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2005-WHQ2,
Appellant,
vs.
STAR GOLDEN ENTERPRISES, LLC,
Respondent.

No. 70637

FILED

AUG 02 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Wells Fargo Bank, N.A., appeals from a district court summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Wells Fargo held a first deed of trust on a property which respondent Star Golden Enterprises, LLC (SGE), purchased at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. SGE filed suit against Wells Fargo to establish that SGE now held the property free and clear of any encumbrances such as Wells Fargo's deed of trust. SGE filed a motion for summary judgment which Wells Fargo opposed, and Wells Fargo requested discovery under NRCP 56(f). The district court allowed limited discovery in response to Wells Fargo's opposition, but ultimately, granted summary judgment in favor of SGE. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists

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and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

To the extent that Wells Fargo argues against NRS Chapter 116's constitutionality, these arguments are unconvincing, and we cannot reevaluate *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. ___, 388 P.3d 970 (2017) (holding that NRS Chapter 116 does not violate the takings clause, nor implicate the lienholder's due process rights, and is constitutional on its face). See *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"). Further, the Nevada supreme court has determined that the holding of *SFR Investments Pool 1, LLC v. U.S. Bank, NA*, 130 Nev. 742, 334 P.3d 408 (2014), which explained the applicability of the Chapter 116 HOA foreclosure process, applies retroactively. See *K&P Homes v. Christiana Trust*, 133 Nev. ___, ___, 398 P.3d 292, 295 (2017).


As for Wells Fargo's arguments that summary judgment was improper as the foreclosure sale was commercially unreasonable, we are not persuaded by the suggested interpretation of *Shadow Wood Homeowners Ass'n, Inc. v. New York Community Bancorp, Inc.*, 132 Nev. ___, 366 P.3d 1105 (2016). The recitals in a deed made pursuant to NRS Chapter 116 are conclusive absent a showing of fraud, unfairness, or oppression in addition to a purported inadequate price at foreclosure. See 132 Nev. at ___, 366 P.3d at 1110. Because a low price is insufficient alone, and there is nothing in the record to show that notice was deficient as alleged, or any other indication of fraud, unfairness, or oppression, we determine that no genuine


issue of material fact exists as to the commercial reasonableness in this foreclosure. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.


Wells Fargo also asserts that the district court improperly refused to allow discovery pursuant to NRCP 56(f), which it claims was needed to generate a question of fact relevant to the balance of equities surrounding the circumstances of the foreclosure sale. We review a request pursuant to NRCP 56(f) for a continuance for additional discovery before summary judgment for an abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). Here, we see no abuse of discretion in the district court's order allowing limited discovery on the issue of notice of the foreclosure sale, especially where Wells Fargo failed to supplement or seek further redress after the limited discovery period ended. *See Summerfield v. Coca Cola Bottling Co. of the Sw.*, 113 Nev. 1291, 1294-95, 948 P.2d 704, 705-706 (1997) (considering a party's diligence in conducting discovery as relevant to court's discretion regarding propriety of NRCP 56(f) continuance).

Therefore, our review of the record and all other arguments shows no genuine issue of material fact exists and summary judgment was proper. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Janet Trost, Settlement Judge
Wright, Finlay & Zak, LLP/Las Vegas
Garman Turner Gordon
Eighth District Court Clerk